

REPUBLIC OF SOUTH AFRICA



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR 2723/2011

In the matter between:

NEHAWU ON BEHALF OF GODRICH GARDEE Applicant

and

GENERAL PUBLIC SERVICE SECTORAL

BARGAINING COUNCIL (GPSSBC)

First Respondent

Z.S SIBEKO N.O

Second Respondent

MPUMALANGA PROVINCIAL GOVERNMENT,

DEPARTMENT OF CO-OPERATIVE GOVERNMENT

AND TRADITIONAL AFFAIRS (COGTA)

Third Respondent

MS. HELEN SHUBE

Fourth Respondent

Heard : 25 January 2013

Order : 25 January 2013

Summary : Unfair labour practice. The failure of the third respondent not to shortlist the applicant did not constitute an unfair labour practice. The applicant did not have the requisite

qualifications for the position. Application to review is dismissed. No order as to costs.

JUDGMENT-REASONS FOR ORDER

AC BASSON J

Introduction

- [1] The applicant is NEHAWU obo Gordrich Gardee (hereinafter referred to as “the applicant”).
- [2] This was an application to review and set aside an award by the arbitrator in terms of which it was held that the third respondent (the Department of Cooperative Governance and Traditional Affairs – Mpumalanga – hereinafter referred to as “the respondent”) did not commit an unfair labour practice by not promoting the applicant to the position of Chief Director: Corporate Services.

Brief exposition of the facts

- [3] The respondent advertised a post for Chief Director: Corporate Services in 2009. The various requirements of the post are listed in the advertisement. Some of the more pertinent requirements are “an appropriate *postgraduate* degree in *Human Resource Management*”¹ and “extensive experience in Human resource and Labour Relations matters and management functions”.
- [4] It was common cause that the applicant had previously applied for the position of Chief Director: Corporate Services and that he was shortlisted. I will refer to this process as the “first process”. During this first process the applicant was interviewed. He was, however not recommended for the post. It is further common cause that the post was not filled at that stage.
- [5] The post was re-advertised for the second time (“the second process”) but this time around the applicant was not shortlisted. The applicant challenged the fact that he was not shortlisted for the post the second time and alleged

¹ Courts’ emphasis.

that this was unfair. He claimed that he should be promoted to the advertised position

[6] The arbitrator analysed the evidence and concluded that it was clear from the evidence that, although the applicant has experience in local government, he lacks qualifications in Human Resources and Labour Relations. The arbitrator further noted that the applicant had conceded during cross-examination that he worked in finance. In respect of the successful candidate the arbitrator held that she meets the majority of the requirements for the post even though she had less experience than that of the applicant in local government. She worked in the field as corporate services manager and has a Human Resources qualification. The arbitrator further noted that the alleged comment by Mr. Mahlobo that the post was reserved for a female was not corroborated by the evidence. The arbitrator concluded that on a balance of probabilities the applicant did not meet the majority of the requirements for the post and that the respondent therefore did not commit an unfair labour practice.

[7] In the founding affidavit the applicant claims that the arbitrator committed various acts of gross irregularity and misconduct with regard to his duties and that there is no rational connection between the evidence and the reasons given to justify the award. The applicant refers to numerous acts indicative of such gross misconduct and irregularity.

Is this award reviewable?

[8] The crux of the applicant's case is the fact that he had met the requirements of the post and therefore should have been appointed in that position. It is further alleged in the founding affidavit that the fourth respondent (the incumbent to the disputed position) did not have the necessary qualifications.

[9] The parties have concluded a pre-trial minute at the commencement of the arbitration proceedings. From these minutes it appears that the issue before the arbitrator was "whether the employee was unfairly excluded from the short listing process in the second advertisement".

[10] Before I turn to the merits, it is important to point out that, according to the advertisement that incumbent had to have an appropriate *postgraduate*

degree in *Human Resource Management*. When the short listing was done, the panel was given the profiles of the candidates who had applied in order to do a preliminary screening. The panel was not given the curriculum vitae of the applicants. One of the applicant's other complaints was the fact that the panel did not even look at the curriculum vitae. According to him this was unfair. I will return to this issue hereinbelow.

[11] In arriving at a conclusion, I had regard to the list of candidates for the position that served before the panel and the profile of each candidate as displayed on this list. Each of the panellists had to choose their four preferred candidates. It is clear from the evidence that none of the panellists chose the applicant. As already pointed out the pre-selection was not done on the basis of the curriculum vitae but on the basis of the profile list. Is it for the Court to conclude that the respondent should not have adopted this method of selection? I am of the view that it is not. This was the selection process adopted by the respondent and there was nothing before the arbitrator to show that this process was biased or not *bona fide*. Furthermore, if regard is had to the candidates on the profile list and particularly the profile of the incumbent that appears as number (19) on the list it is patently clear that the incumbent has a post graduate degree whereas the applicant does not have such a qualification. The following qualifications are listed against the incumbent's profile: "Bachelor of Administration and Honours Degree: Human Resource Management and Development and Diploma: Training and Development". In contrast the applicant has no post graduate degree in Human Resources. There is, in my view, no comparison between the two candidates. The incumbent meets the requirements by far.

[12] I am on the evidence therefore satisfied that the arbitrator had arrived at a reasonable conclusion namely that the applicant did not have the required qualifications. I can therefore find no reason to interfere with this decision.

[13] In the event the application to review is dismissed. There is no order as to costs.

AC BASSON J
Judge of the Labour Court

LABOUR COURT

APPEARANCES:

For the Applicant : Mr. H Kgotleng of Kgotleng Attorneys

For the Respondent : Advocate T. Makhubele

Instructed by : The State Attorney, Pretoria.

LABOUR COURT